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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. 365.

OCTOBER TERM, 1945.

SEAS SHIPPING COMPANY, INC.,
Petitioner,

v.

JOSEPH SIERACKI,
Respondent.

MOTION OF AMERICAN MERCHANT MARINE INSTITUTE, INC., MARITIME ASSOCIATION OF THE PORT OF NEW YORK, NATIONAL ASSOCIATION OF STEVEDORES, PACIFIC-AMERICAN STEAMSHIP ASSOCIATION, SHIPOWNERS' ASSOCIATION OF PACIFIC COAST, WATERFRONT EMPLOYERS' ASSOCIATION OF PACIFIC COAST AND ASSOCIATION OF AMERICAN SHIPOWNERS FOR LEAVE TO FILE ANNEXED BRIEF, *AMICI CURIAE*, ON PETITION FOR REHEARING.

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American Merchant Marine Institute, Inc.,
Maritime Association of the Port of New York,
National Association of Stevedores,
Pacific-American Steamship Association,
Shipowners' Association of Pacific Coast,
Waterfront Employers' Association of Pacific Coast, and
Association of American Shipowners.

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To the Honorable, the Justices of the Supreme Court of the United States:

Now come the American Merchant Marine Institute, Inc., the Maritime Association of the Port of New York, the National Association of Stevedores, the Pacific-American Steamship Association, the Shipowners' Association of the Pacific Coast, the Waterfront Employers' Association of the Pacific Coast and the Association of American Shipowners and respectfully move that the Court grant leave to file the annexed brief, *amici curiae*, and that the Court consider

it upon the Petition for Rehearing on behalf of Seas Shipping Co., Inc.

The written consent of Petitioner to the filing of this brief has been filed with the Court pursuant to Rule 27, Paragraph 9. Respondent, as evidenced by the annexed letter from his counsel, has declined to consent.

The American Merchant Marine Institute, Inc., is a New York membership corporation of American merchant shipowners and operators numbering seventy members and owning or operating 4,550,266 gross tons of all types of American Flag ships in the foreign and coastwise deepsea trades.

The Maritime Association of the Port of New York is an unincorporated association of all classes of shipping interests and moves here on behalf of its fifty-six contracting stevedore members in the Port of New York who do 75% of the stevedoring work of that port.

The National Association of Stevedores is a nationwide association of contracting stevedores with eighty-five members who employ approximately 65 to 70% of all stevedoring labor in the United States.

The Pacific-American Steamship Association is a California corporation with a membership of fifteen Pacific Coast steamship companies engaged in offshore, intercoastal, and Alaska trades.

The Shipowners' Association of the Pacific Coast is a California corporation comprising twenty-one members all engaged in Pacific coastwise operations.

The Waterfront Employers' Association of the Pacific Coast is a California corporation having one hundred forty members engaged in steamship, stevedoring or terminal operations on the Pacific Coast.

The Association of American Shipowners is an unincorporated association comprising sixteen Amer-

ican steamship companies owning or operating American Flag freight and passenger vessels in the foreign and coastwise deep sea trades.

As evidenced by the affidavit of Frank J. Taylor annexed to the brief, leave to file which is requested, the inevitable effect of the instant decision of the Court will be to create a great dislocation of the entire maritime industry, handicapping steamship operators in the conduct of their business and driving many independent contracting stevedores out of business. All of these effects, as is shown in the brief, will be without any corresponding benefit to the longshoremen who as a class might appear to be the beneficiaries of the social policy underlying the decision.

Respectfully submitted,

JOHN J. BURNS,

FRANCIS S. WALKER,
Attorneys for:
American Merchant Marine Institute, Inc.,
Maritime Association of the Port of New York,
National Association of Stevedores,
Pacific-American Steamship Association,
Shipowners' Association of Pacific Coast,
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BRIEF OF AMERICAN MERCHANT MARINE INSTITUTE, INC., MARITIME ASSOCIATION OF THE PORT OF NEW YORK, NATIONAL ASSOCIATION OF STEVEDORES, PACIFIC-AMERICAN STEAMSHIP ASSOCIATION, SHIPOWNERS' ASSOCIATION OF PACIFIC COAST, WATERFRONT EMPLOYERS' ASSOCIATION OF PACIFIC COAST AND ASSOCIATION OF AMERICAN SHIPOWNERS, *AMICI CURIAE*, ON PETITION FOR REHEARING OF SEAS SHIPPING CO., INC.

Scope of This Brief.

The sole concern of the *amici curiae*, who severally represent practically all of both American-Flag steamship operators and independent contracting stevedores,[1] is with the effect of the decision of the major-

[1] It is customary in the maritime industry to refer to independent contractors who undertake the whole job of loading or discharging cargo as "stevedores"; laborers actually engaged in this work as employees are known as "longshoremen." The words "stevedore" and "longshoreman" will be used throughout this brief in this generally accepted sense, which is consistent with the use of the word "longshoreman" in the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C., Sec. 901 *et seq.*

ity of the Court upon stevedoring operations in American harbors. As will be shown, *infra*, this decision will seriously dislocate the entire American maritime industry, to the substantial detriment of both steamship operators and the contracting stevedores and without any offsetting benefit to longshoremen. It is believed that, if the attention of the Court had been invited to these effects of its decision in this case of first impression, a contrary result would have been reached. It is not considered necessary to make the customary statement of facts, the questions involved, etc., as these details are already before the Court and in any event are adequately presented in the Petition for Rehearing.

Summary of Argument.

I—The Court overlooked the effect of the Longshoremen's and Harbor Workers' Compensation Act in holding that a longshoreman employed by an independent contracting stevedore is a "seaman" entitled to recover against a vessel owner under a warranty of seaworthiness for injuries sustained on board resulting from a non-negligent failure of ship's tackle.

II—The vessel owner *can* divest himself of the liability to longshoremen for unseaworthiness established by this case.

III—The entire maritime industry will be dislocated by this decision without corresponding benefit to the class sought to be aided.

ARGUMENT.

I.

The Court overlooked the effect of the Longshoremen's and Harbor Workers' Compensation Act in holding that a longshoreman employed by an independent contracting stevedore is a "seaman" entitled to recover against a vessel owner under a warranty of seaworthiness for injuries sustained on board resulting from a non-negligent failure of ship's tackle.

At page 3, the majority opinion states:

> "There could be no question of petitioner's liability for respondent's injuries, incurred as they were here, if he had been in petitioner's employ rather than hired by the stevedoring company."

With this statement we fully agree: *if* Respondent had been a member of the crew—a real seaman or mariner. In that event the owner would have been liable without limitation of damages, despite the fact that the latent defect in the shackle causing his injury could not have been discovered by the exercise of the fullest diligence, under the accepted doctrine that, as to crew members, the owner is an insurer of the seaworthiness of the vessel and her tackle. *The Osceola*, 189 U. S. 158 (1902). However, if, as is the present case, the employee had been a longshoreman or other harbor worker (including any employee of the vessel owner not a member of the crew), the shipowner employer would be liable only under an exclusive compensation statute. Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C.,

Sec. 901 *et seq.* No question of lack of seaworthiness would be raised; the employer's liability would rest solely on the fact of employment as a longshoreman or harbor worker upon navigable waters.

In effect, the Court holds that the fortuitous fact that Respondent was employed by an independent contractor enlarges his remedies. He has his statutory remedy, without the necessity of showing any fault, against the employing stevedore contractor. In addition, under the novel doctrine of this decision, he can also hold the innocent and non-negligent shipowner liable because of a lack of seaworthiness which the exercise of the fullest diligence failed to detect, a liability which he could not assert if he had been employed directly by the shipowner.[2]

We do not question the settled policy that as between innocent victims of an industrial accident, the employer is in the better position to shoulder and "to distribute loss in the shipping community which receives the service and should bear the cost" (Op., p. 6). Such is the policy of the Longshoremen's and Harbor Workers' Compensation Act. We also emphatically agree that "when a man is performing a function essential to maritime service on board a ship the fortuitous circumstances of his employment by the shipowner or a stevedoring contractor should not determine the measure of his rights" (Op., p. 8). But it is the *nature* of his maritime service which should be controlling, and in that respect the Congress has established the policy that a distinction should be drawn between crew members and long-

[2] It is probably unnecessary to point out that the Respondent also has a judgment for the full amount of his damages against two solvent shipbuilders whose negligence was responsible for the accident.

shoremen. By overlooking this distinction, and the *exclusive* remedy features of the Longshoremen's Compensation Act, the Court is permitting just such fortuitous employment of the Respondent by a stevedoring contractor to enlarge his rights as against the vessel owner.

In finding the Respondent to be a "seaman" and thus entitled to hold a shipowner absolutely liable without fault because of unseaworthiness, the majority opinion reasons that the work of a longshoreman is of such a character and so closely allied to that of a mariner or seaman that it is justifiable to call him a seaman for the purpose of this seaman's remedy. The Court therefore concludes that the vessel-owner is liable to a longshoreman as he would be to a mariner or "sea-going" seaman, even though the longshoreman is employed by an independent stevedore.

Passing for the moment the fact that the Respondent by statute would have had no such remedy if he had been employed by the vessel owner *as a longshoreman* (a capacity in which he was in fact engaged), the Court's argument rests on the assumption that the Respondent's duties were analogous to some ancient and no longer practiced duties of a real seaman. However, as is shown by the annexed affidavit of Henry Russell Patterson, seamen long ago ceased to perform the work now done by the independent stevedore and his longshoremen, and under present day requirements could not even begin to do the work performed by them. There are not enough available men on a ship to work one hatch for one shift let alone five hatches with frequent night loading and discharging necessitating a second shift. For many years before *The Osceola* decision in 1902, stowage and discharge of cargo were customarily done by landsmen—the long-

shoremen, or stevedores. When *The Osceola* decided that sea-going personnel should have the protection of liability without fault for unseaworthiness, they were no longer performing the cargo handling or stevedoring functions. And the longshoremen who were working the cargo were generally employees of independent contractors.[3] To analogize them now to sea-going personnel, as against all other invitees on board a ship, because at one time cargo handling was performed by the crew, loses sight of the fact that the separation of function occurred long before the warranty of seaworthiness doctrine was established, and also of the fact that longshoremen in reality are landsmen and should be classed (as Congress did in the Longshoremen's Compensation Act) with all other harbor workers who perform various tasks about ships in port.[4]

In addition to the historical separation of the nature of a seaman's duties and those of a longshoreman, it is submitted that an analysis of longshoremen's work today requires the conclusion that they be considered in the same category as any other shoreside industrial occupation and distinguished from members of the crew. Harbor workers face none of the hazards of the sea. A sailor told to go aloft in a storm to secure

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[3] On the other hand the Court's information that the instances where the vessel owner hires the longshoremen directly are "presumably rare" is inaccurate as shown in the Taylor affidavit annexed hereto.

[4] In fact, the unions of both the seamen and the longshoremen resist any attempts to have one class perform any work considered by custom, or specifically provided by the collective bargaining contracts, to be the work of the other. Thus, the crew of an American vessel would probably refuse to lift on board and stow a single case of goods arriving at the pier just before sailing time and after the longshoremen had left.

loose gear endangering the ship does not tell the mate he does not like the strength of the rigging. He goes up the mast. Were it not so, no ship would be seaworthy, in fact as well as in law, because of an undisciplined, disobedient crew. It is for this reason that the vessel owner first was held to a high degree of care to see that all parts of a ship and all appliances were fully suited to their intended use, and then later was made an insurer of their seaworthiness. The sailor at sea cannot get off and has no alternative but to accept the equipment furnished him. Convenience of judicial administration required that the same rule apply to crew members in port, but the extension of the doctrine to other workers on a ship in port who are free to leave their employment at any time is an unwarranted extension of seagoing standards to what is essentially a shoreside industry.

Industrial employers ashore are held only to a duty of care and are not liable without negligence to their employees or invitees on their premises. A dividing line must be drawn somewhere. It is submitted that this line should be so drawn to separate sea-going personnel from landsmen as was done by the Congress in the Longshoremen's and Harbor Workers' Compensation Act. The longshoreman is essentially a shoreside cargo-handler whether working in a ship's hold, her deck, on the pier, loading freight cars or trucks, and his duties are analogous to and he is interchangeably employed as a freight handler in railroad stations, warehouses, etc. That no proper social purpose is served by the result reached is indicated by law review criticism of the decision of Circuit Court of Appeals for the 3rd Circuit, which this Court affirmed in this case. Thus

45 Col. L. Rev. 957, 960 (1945):

"His interests were considered basically those of

a landsman—not subject to the peculiarities of a seaman's contract and adequately protected by a compensation statute. It may be concluded, therefore, that his needs do not warrant affording him more protection than that assured to other land employees.[21]"

"[21] It may be noted in conclusion that modern law has developed the policy of imposing strict liability as part of a social philosophy which places the burden of the more or less inevitable losses due to socially desirable conduct upon those best able to bear them—or has shifted them to society at large. Pound, *The End of Law as Developed in Legal Rules and Doctrines* (1914) 27 Harv. L. Rev. 195. This is the basis of insurance and workmen's compensation. Therefore it logically follows that where an employee [as in the instant case] is protected by an existing compensation law, he is being given the advantage of liability without fault, and any additional imposition of such protection is a duplication of a legal benefit."

59 Harv. L. Rev. 127, 128 (1945):

"Any burden of absolute liability should rest on sound social and economic requirements, especially when other common law and statutory remedies are available. Furthermore, the peculiar relationship which may be used to sustain the shipowner to a very high degree of care when the rights of a sailor are concerned does not exist between the shipowner and a longshoreman."

In conclusion it is submitted that the Court should follow the traditional and practical dividing line between landsmen and those who go to sea, a line which is followed by the Congress in the Longshoremen's and Harbor Workers' Compensation Act. It follows that the Court should deny to longshoremen the special protection of the doctrine of unseaworthiness,[3] particularly since it is available only to those who are employed by independent contractors and not by vessel owners.

II.

The vessel owner *can* divest himself of the liability to longshoremen for unseaworthiness established by this case.

At page 10 of the Opinion the majority say:

> "Nor does it follow from the fact that the stevedore gains protections against his employer appropriate to the employment relation as such, that he loses or never acquires against the shipowner the protections, not peculiar to that relation, which the law imposes as incidental to the performance of that service. Among these is the obligation of seaworthiness. It is peculiarly and exclusively the obligation of the owner. It is one he cannot delegate. By the same token it is one *he cannot contract away as to any workman within the scope of its policy.*" (Italics supplied.)

[3] The seafaring man, while having a warranty of seaworthiness, has no compensation statute. The instant decision really makes the longshoreman the most favored class of any workingman.

It is again submitted that the Court has overlooked the provisions of the Longshoremen's and Harbor Workers' Compensation Act. By the simple procedure of dispensing with the employment of the contracting stevedore and hiring the necessary longshoremen directly as his own employees, the vessel owner can under the policy and specific provisions of the compensation statute relieve himself not only of the new liability for unseaworthiness created by this decision but also of his long-standing liability for injuries caused by negligence. This point is brought out fully in the Petition for Rehearing and need not be labored here.

III.

The entire maritime industry will be dislocated by this decision without corresponding benefit to the class sought to be aided.

As shown in the annexed affidavit of Frank J. Taylor, this decision as it now stands imposes a large and new burden upon the shipping industry. For a liability limited to negligence—which through diligence can always be guarded against—there is substituted the liability of an insurer. The increase in cost will be substantial. Protection and indemnity insurance rates can be expected to increase. The shipowner, who in the face of post-war foreign competition will be soon faced with the problem of saving everywhere to make both ends meet, will be forced to overhaul his methods of handling cargo. As many have already done, a great many operators have expressed their intention of doing their own stevedoring which, as has been pointed out, cuts off

the present right of the longshoremen employed by an independent stevedore to bring third-party actions against the vessel owner. All longshoremen will then have only their workmen's compensation and will lose their present right to recover against the shipowner for injuries caused by negligence.

The shipping trade will lose the skill of the independent stevedoring companies which have specialized in the work for years. Also lost will be a considerable amount of the flexibility afforded by the present system.

On the contracting stevedore's side, he stands to lose many of his customers because, by avoiding this new liability, they will now be able to do the work more cheaply than he. Many of the stevedores may be forced to suspend operations.

All of this might be faced with equanimity if the Court's decision would accomplish the desired social purpose, but when the longshoreman, through the simple expedient of changing his employer, benefits naught, it is submitted that the Court should be reluctant to extend the present liabilities of shipowners.

Throughout the opinion of the Court runs the thread of disapproval of attempts at insulation of liability to employees by the interposition of an independent contractor employer. The Courts have been properly vigilant to strike down such attempts wherever possible. Here there is no such attempt. The shoe is on the other foot, and it is only such interposition that gives rise to any cause of action. Nor can any vessel owner who feels compelled to hire longshoremen directly be criticized therefor, because he is merely availing himself of a statute passed by Con-

gress to protect the interests of the longshoremen by affording them certainty of compensation for accidental injuries arising out of their employment from any cause whatsoever.

Conclusion.

A rehearing should be granted in this case because:

1. The Court overlooked the effect of the Longshoremen's and Harbor Workers' Compensation Act in holding that a vessel owner's liability for unseaworthiness should exist in favor of a longshoreman employed by an independent stevedore on the apparent assumption that such liability would exist in favor of a longshoreman employed directly by the vessel owner. The exclusive remedy provisions of Section 5 of that Act would exclude any action based on unseaworthiness in the latter case.

2. The Court overlooked the fact that a vessel owner can contract himself out of the liability of the instant decision by employing his longshoremen directly.

3. The Court was not informed of the true historical nature of the longshoremen's employment, the separation of their functions from those of seafaring men long before the doctrine of the owner's warranty of seaworthiness was established, nor the frequency of their direct employment by vessel owners.

4. The Court was not informed of the dislocation of the maritime industry that will be occasioned by the decision as it now stands, all without any benefit

to the longshoremen, apparent beneficiaries of the decision, who are already protected by a fair compensation statute.

Respectfully submitted.

JOHN J. BURNS.

FRANCIS S. WALKER,
Attorneys for:
American Merchant Marine Institute, Inc.,
Maritime Association of the Port of New York,
National Association of Stevedores,
Pacific-American Steamship Association,
Shipowners' Association of Pacific Coast,
Waterfront Employers' Association of Pacific Coast, and
Association of American Shipowners,
Amici Curiae.

May, 1946.

APPENDIX.

IN THE

SUPREME COURT OF THE UNITED STATES,

No. 365.

OCTOBER TERM, 1945.

SEAS SHIPPING COMPANY, INC.,

Petitioner,

v.

JOSEPH SIERACKI,

Respondent.

AFFIDAVIT OF FRANK J. TAYLOR.

State of New York,
County of New York—ss.:

FRANK J. TAYLOR, being duly sworn, deposes and says:

1. He is President of the American Merchant Marine Institute, Inc., with offices at 11 Broadway, New York, New York, having served in that capacity since its organization in 1938. The Institute is a

membership organization of 70 companies engaged in all forms of deep sea and coastwise transportation, who own or operate a total of 4,550,266 gross tons of shipping under the American Flag.

2. On May 13, 1946, I sent telegrams to all member companies of the Institute engaged in the dry cargo service, inquiring as to their customary practices with respect to performing their own stevedoring work or engaging independent stevedoring contractors. Based on the telegraphic replies received in time for the execution of this affidavit, the following table sets forth, by companies, how their stevedoring work is performed:

Company	Performs own stevedoring in its principal ports and engages independent contractors in other ports.	Stevedoring done exclusively by independent contractors in U. S. ports.
Atlantic Gulf and West Indies Steamship Lines	[1]	
Alcoa Steamship Co.		X
American Export Lines, Inc.		X
American President Lines		X
American South African Line		X
American West African Line	X[2]	
Black Diamond Steamship Corp.		X
Calmar Steamship Corp.		X
Chile Steamship Co., Inc.		X
Grace Line, Inc.	X[3]	
International Freighting Corp.		X
Isthmian Steamship Co.		X
Lykes Bros. Steamship Co.	X	
Marine Transport Lines, Inc.		X
Matson Navigation Co.	X[4]	
Mississippi Shipping Co.	X[5]	
Moore-McCormack Steamship Co.	X[6]	
Seas Shipping Co.		X
South Atlantic Steamship Line	X[7]	
Southern Steamship Co.		X
Stockard Steamship Co.		X
Sword Line, Inc.		X
Union Sulphur Co., Inc.		X
United Fruit Co.	X[8]	
United States Lines Co.	X[9]	
Wilmore Steamship Co.		X

[1] Did own stevedoring before war and plans to operate for experimental period with independent stevedores to compare efficiency.

[2] Does own stevedoring at New York through an affiliate.

[3] Does own stevedoring at San Francisco and part at New York.

[4] Does own stevedoring at Los Angeles, San Francisco, Seattle and Tacoma.

[5] Does own stevedoring at New Orleans.

[6] Does own stevedoring at New York and Philadelphia.

[7] Does own stevedoring at New Orleans, Mobile, Pensacola, Jacksonville, Savannah, Brunswick, Galveston and Houston.

[8] Does own stevedoring at New York, New Orleans, Boston, Philadelphia, Baltimore and Charleston.

[9] Does own stevedoring at Baltimore only.

3. If the present decision of the Supreme Court in this case is permitted to stand, with the resultant liability of a vessel owner to longshoremen employed by an independent stevedore for any injuries sustained by such longshoremen occasioned by an unseaworthy condition of the vessel, it is my opinion, and that of those steamship operating personnel with whom I have discussed the matter, that the premium rates for protection and indemnity insurance (which covers the vessel owner's liability in such cases) will necessarily be substantially increased. Those companies which act as self-insurers anticipate a substantial increase in their costs.

4. I have been advised by counsel that if the longshoremen engaged in working cargo upon a vessel were employed directly by the vessel owner, this new liability for non-negligent injury because of unseaworthiness, as well as the previously recognized liability for negligent injury, would be avoided, and that the vessel owner's liability would be restricted to that provided by the Longshoremen's and Harbor Workers' Act.

5. As a result of these anticipated substantial increases in costs of cargo handling, and the fact that such increases can be avoided by employing the longshoremen directly, many vessel operators now employing contracting stevedores have indicated their present intention of dispensing with the independent stevedore and of performing the stevedoring function directly through their own longshore employees. Many other companies have not yet had time to come to such a conclusion but are investigating the relative

costs of this increased liability and the intra-company feasibility of setting up a stevedoring operation. In my opinion, such a drastic change in the method of performing stevedoring operations cannot help but work a dislocation of the maritime industry in American harbors at a time when it is of the greatest importance to American foreign trade to maintain flexibility and continuity of operations.

FRANK J. TAYLOR.

Subscribed and sworn to before me
this 15th day of May, 1946.

RUTH HARLAN,
Notary Public,
New York County.
N. Y. Co. Clk's No. 369; Reg. No. 765-H-7
Commission Expires March 30, 1947.

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SUPREME COURT OF THE UNITED STATES,

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Petitioner,

v.

JOSEPH SIERACKI,
Respondent.

AFFIDAVIT OF HENRY RUSSELL PATTERSON.

State of New York,
County of New York—ss.:

HENRY RUSSELL PATTERSON, being duly sworn according to law, deposes and says:

1. I am Vice-President of The Jarka Corporation, Stevedores and Marine Terminal Operators, with offices at 15 Whitehall Street, New York, New York.

2. In 1896 I enrolled in the New York State School Ship "St. Mary's", and since that time I have been continuously and actively engaged in the maritime industry. My experience at sea includes service as a seaman on a full-rigged ship and on coasting schooners; as quartermaster and boatswain for the Morgan Line; nineteen years as a licensed deck officer for American-Hawaiian Steamship Co., the last ten

years as master; one year as Lieutenant Commander, United States Naval Reserve, commanding troop transports; and one year as master for the United States Mail Steamship Co., a predecessor of the present United States Lines. Since 1922 I have been connected with The Jarka Corporation as Pier Manager and Supervisor of Stevedoring in New York. In the course of such work I have been in charge of all stevedoring in New York for such lines as North German-Lloyd, Hamburg-American, Holland-American, American-Hawaiian, Isthmian, Newtex, and others. The Jarka Corporation also operates in Searsport and Portland, Maine, Boston, Port Newark, Philadelphia, Baltimore, and, through a subsidiary, Norfolk and Newport News, and I am extremely familiar with stevedoring operations in all those harbors. My connection with The Jarka Corporation was interrupted for the four-year period of 1942 through 1945, during which I served as Captain, United States Naval Reserve. In the course of this service I had charge of the training of stevedores for the Navy, and later supervised thirty-eight battalions of stevedore CB's in the Pacific.

3. On the basis of my experience, both at sea and ashore, I am familiar with established practices with respect to loading and discharging cargo, and the relative functions performed by members of a vessel's crew and shore gangs of longshoremen.

4. References to the use of landsmen, rather than crew members, to discharge cargo are found as far back as Venetian days. There was no fixed time when

this practice became general, but the development was a gradual one which followed from the enlargement of port facilities as harbors increased in importance, and also from the increasing size of cargo vessels and their greater dependence on machinery rather than manpower for their operations. Certainly within my experience over the last fifty years since 1896, it has never been considered that loading and discharging cargo is a duty of the ship's crew, and I question whether it would even be permitted under a modern maritime union contract unless necessary for the safety of the vessel. The newspapers reported several significant examples during the recent war of the refusal of merchant vessel crew members to discharge cargo even in combat areas.

5. The large number of men required for efficient discharge of cargo makes it clear that this work could not under any circumstances be properly performed by the small deck force available on a modern merchant vessel. Taking the Victory ship as an example, the official manning scale calls for a deck force, exclusive of licensed officers, of one carpenter, one boatswain, six able seamen, three ordinary seamen, and two deck maintenance men, a total of thirteen. As against this, a total of seven gangs averaging twenty-three men each are required for the efficient discharge of cargo from the five hatches of a Victory ship, a total of 161 men. If the work is to be done continuously, two shifts are necessary, or a total of 322 men. And each of the seven gangs is composed of specialists: one foreman, eight men in the hold, four winch-drivers and gangwaymen on deck, two slingers

on the stringpiece, six men on the dock, and two tractor-drivers. All the members of such gangs, performing the same type of work day after day, obviously acquire skills which could not be matched by crew members, however competent they may be in their own work of seamanship.

H. R. PATTERSON.

Subscribed and sworn to before me
this 15th day of May, 1946.

RUTH HARLAN,
Notary Public,
New York County.
N. Y. Co. Clk's No. 369, Reg. No. 765-41-7.
Commission Expires March 30, 1947.

LETTERHEAD OF

FREEDMAN, LANDY AND LORRY
1015 Chestnut Street
Philadelphia 7, Pa.

May 14, 1946

Messrs. Burns, Currie, Walker and Rich,
40 Wall Street,
New York 5, N. Y.

Attention: Francis S. Walker, Esquire
Re: Seas Shipping Company vs. Sierracki

Dear Mr. Walker:

This is to acknowledge receipt of your letter of May 11th requesting that we advise you whether we will consent to your filing a Brief as Amicus Curiae in the above matter.

We have very carefully considered your request, but feel that at this stage of the proceedings, any further action will only serve to unduly prolong the litigation. This is to advise, therefore, that we do not consent to the filing of a Brief as Amicus Curiae by you at this time.

Very truly yours,

FREEDMAN, LANDY AND LORRY
By /s/ Abraham E. Freedman

AEF:EK

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SUPREME COURT OF THE UNITED STATES.

No. 365.—October Term, 1945.

Seas Shipping Company, Inc., Petitioner, *vs.* Joseph Sieracki.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 22, 1946.]

Mr. Justice Rutledge delivered the opinion of the Court.

The principal question is whether the obligation of seaworthiness, traditionally owed by an owner of a ship to seamen, extends to a stevedore injured while working aboard the ship.

Sieracki was employed by an independent stevedoring company which was under contract to petitioner to load its ship, the S.S. Robin Sherwood. On December 23, 1942, he was on the vessel loading cargo. The winch he operated was controlled by a ten-ton boom at number five hatch. One part of a freight car had been lowered into the hold. The second part weighed about eight tons. While it was being put down the shackle supporting the boom broke at its crown, causing the boom and tackle to fall and injure respondent.

He sued petitioner and two other companies. These were the Bethlehem Steel Company, to which the Maritime Commission had awarded the contract for constructing the ship, and Bethlehem Sparrow's Point, Inc., which had built part of the ship under agreement with the steel company. The District Court found that the shackle had broken as the result of a defect which had occurred in its forging. The Bethlehem companies had purchased this equipment from another concern. Nevertheless the court held they were negligent in not having tested it adequately before installing it. But the court considered petitioner to be under no such obligation to test[1] and therefore not negligent. Accordingly, it gave judgment against the two Bethlehem companies but in favor of petitioner. 57 F. Supp. 724.

The Circuit Court of Appeals reversed as to petitioner. 149 F. 2d. 98. Accepting the District Court's conclusion that it was

[1] Visual inspection would not have disclosed the defect.

not negligent, the Court of Appeals was of the opinion that respondent should recover for the ship's lack of seaworthiness. The opinion emphasized that the decision was novel, noting "statements and assumptions each way."[3] Because of the novelty and importance of the question we granted certiorari.[4] 326 U. S. —.

The finding that the ship was unseaworthy is not disputed. Petitioner says, first, that the doctrine of unseaworthiness is peculiar to admiralty and cannot be applied in a suit brought on the law side of the court. It also urges that in any event the liability may not be extended properly to the benefit of stevedores and longshoremen. And finally petitioner argues that if the doctrine is properly so applicable, its liability is only secondary to that of the Bethlehem companies which both courts found to be negligent; and therefore petitioner, the nonnegligent defendant, should not be held "jointly" liable with the negligent ones.

At the outset we may dismiss the first contention. It is now well settled that a right peculiar to the law of admiralty may be enforced either by a suit in admiralty or by one on the law side of the court. *Carlisle Packing Co.* v. *Sandager*, 259 U. S. 255, 259; *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 243-244; *Rhones* v. *Socony-Vacuum Oil Co.*, 37 F. Supp. 616.[5]

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[2] The District Court found "that the accident occurred by reason of the unseaworthiness of the vessel." 57 F. Supp. 724, 726.

[3] The references were to W. J. McCahan Co. v. Stoffel, 41 F. 2d 651, 654 (C. C. A. 3); Cassil v. United States Emergency Fleet Corp., 289 Fed. 774 (C. C. A. 9), suggesting liability; and, to the contrary, Panama Mail S. S. Co. v. Davis, 79 F. 2d 430 (C. C. A. 3); Bryant v. Vestland, 52 F. 2d 1078 (C. C. A. 5); Luckenbach S. S. Co. v. Buzynski, 19 F. 2d 871 (C. C. A. 5), rev'd on another ground, 277 U. S. 226; The Howell, 273 Fed. 513 (C. C. A. 2); The Student, 243 Fed. 807 (C. C. A. 4); Jeffries v. DeHart, 102 Fed. 765 (C. C. A. 3); The Mercier, 5 F. Supp. 511, affirmed, 72 F. 2d 1008 (C. C. A. 9).

[4] See in addition to the authorities cited by the Circuit Court of Appeals, 149 F. 2d at 102; Decision (1945) 45 Col. L. Rev. 957; (1945) 59 Harv. L. Rev. 127; (1946) 19 Temp. L. Q. 336, 339.

[5] Nothing in 28 U. S. C. § 41(3) is to the contrary. The section provides that federal district courts shall have jurisdiction "of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it. . . ." This does not mean that where suit is brought at law the court is restricted to the enforcement of common-law rights. Chelentis v. Luckenbach S. S. Co., 247 U. S. 372, 384; Panama R. Co. v. Johnson, 264 U. S. 375, 387-388; Panama Refining Co. v. Vasquez, 271 U. S. 557, 560-561. "When a cause of action in admiralty is asserted in a court of law its substance is unchanged." Panama Agencies Co. v. Franco, 111 F. 2d 263, 266.

Equally unavailable is the contention concerning the secondary character of petitioner's liability. That liability, if it exists, not only sounds in tort;[6] but rests upon an entirely different basis from that upon which recovery has been had against the Bethlehem companies. Such a liability therefore would be not joint but several and the judgment of the Court of Appeals obviously went on this view. Moreover the contention necessarily affects the Bethlehem companies, at any rate in relation to possible claim of indemnity by petitioner. They have not been named as respondents here or served in accordance with Rule 38(3). Consequently we are precluded from making any determination concerning their rights or liabilities, with relation either to petitioner or to respondent.

The nub of real controversy lies in the question whether the shipowner's obligation of seaworthiness extends to longshoremen injured while doing the ship's work aboard but employed by an independent stevedoring contractor whom the owner has hired to load or unload the ship.

There could be no question of petitioner's liability for respondent's injuries, incurred as they were here, if he had been in petitioner's employ rather than hired by the stevedoring company. That an owner is liable to indemnify a seaman for an injury caused by the unseaworthiness of the vessel or its appurtenant appliances and equipment has been settled law in this country ever since *The Osceola*, 189 U. S. 158. *Mahnich* v. *Southern S.S. Co.*, 321 U. S. 96, 99, and authorities cited. And the liability applies as well when the ship is moored at a dock as when it is at sea. See, *e. g.*, *The Edith Goddon*, 23 Fed. 43; *Wm. Johnson & Co.* v. *Johansen*, 86 Fed. 886; *The Waco*, 3 F. 2d 476.

Petitioner insists, however, that the obligation flows from and is circumscribed by the existence of the contract between the owner of the vessel and the seaman. Accordingly, since there was no such contract here, it says respondent cannot recover. Respondent is equally insistent that the owner cannot slough off liability to those who do the vessel's work by bringing an intermediary contracting employer between himself and those workers. In respondent's view the liability is an incident of the maritime ser-

[6] Cf. text *infra*; Cortes v. Baltimore Insular Line, 287 U. S. 367; Atlantic Transport Co. v. Imbrovek, 234 U. S. 52.

vice rendered, not merely of the immediate contractual relation of employment, and has its roots in the risks that service places upon maritime workers and in the policy of the law to secure them indemnity against such hazards.

Obviously the norm of the liability has been historically and still is the case of the seaman under contract with the vessel's owner. This is because the work of maritime service has been done largely by such persons. But it does not follow necessarily from this fact that the liability either arose exclusively from the existence of a contractual relation or is confined to situations in which one exists.

The origins are perhaps unascertainable.[7] But that fact in itself may be some evidence that contract alone is neither the sole source of the liability nor its ultimate boundary. For to assume this would be at once to project ideas of contract backward into centuries governed more largely than our own by notions of status,[8] and to exclude from the protection all who do the work of the sea without benefit of contract with the owner. It may be doubted, for example, that he has ever been able to escape liability to impressed seamen, in whose cases to speak of "contract" would only rationalize a responsibility imposed regardless of consensual relationship. And it would hardly seem consistent with the obligation's benevolent purposes[9] that the

[7] It has been suggested that "the seaman's right of indemnity for injuries caused by defective appliance or unseaworthiness seems to have been a development from his privilege to abandon a vessel improperly fitted out." The Arizona *v.* Anelich, 298 U. S. 110, 121, note 2; Mahnich *v.* Southern S. S. Co., 321 U. S. 96, 99; cf. The Osceola, 189 U. S. 158.

It does not follow that the right of abandonment would not exist if the seaman were hired by another at the instance of the vessel's owner, and no decision to which we have been referred so holds.

[8] See Maine, Ancient Law (1861). For a modern criticism, see Pound, Interpretations of Legal History (1930) 53 *et seq.*

[9] An excellent summary is given by Parker, J., in The State of Maryland, 85 F. 2d 944, 945:

"Seamen are the wards of admiralty, and the policy of the maritime law has ever been to see that they are accorded proper protection by the vessels on which they serve. In early days, this protection was sufficiently afforded by the enforcement of 'maintenance and cure.' Vessels and their appliances were of comparatively simple construction, and seamen were in quite as good position ordinarily to judge of the seaworthiness of a vessel as were her owners. . . .

"With the advent of steam navigation, however, it was realized, at least in this country, that 'maintenance and cure' did not afford to injured seamen adequate compensation in all cases for injuries sustained. Vessels were no longer the simple sailing ships, of whose seaworthiness the sailor was an adequate judge, but were full of complicated and dangerous machinery, the

owner might nullify it by the device of having all who man the ship hired by others willing to furnish men for such service at sea or ashore.

It is true that the liability for unseaworthiness is often said to be an incident of the seaman's contract. But in all instances which have come to our attention this has been in situations where such a contract existed.[10] Necessarily in such a setting the statement could have no reference to any issue over liability in the absence of such a contractual relation. Its function rather has been to refute other suggested restrictions which might be held to apply on the facts. Most often perhaps these have been limitations arising from the erroneous idea that the liability is founded in negligence and therefore may be defeated by the common-law defenses of contributory negligence, assumption of risk and the fellow servant rule. *Mahnich* v. *Southern S.S. Co.*, supra; *Carlisle Packing Co.* v. *Sandanger*, 259 U. S. 255.

Because rationalizing the liability as one attached by law to the relation of shipowner and seaman, where this results from contract, may have been thought useful to negative the importation of those common-law tort limitations does not mean, how-

operation of which required the use of many and varied appliances and a high degree of technical knowledge. The seaworthiness of the vessel could be ascertained only upon an examination of this machinery and appliances by skilled experts. It was accordingly held that the duty of the vessel and her owners to the seaman, in this new age of navigation, extended beyond mere 'maintenance and cure,' which had been sufficient in the simple case of sailing ships; that the owners owed to the seamen the duty of furnishing a seaworthy vessel and safe and proper appliances in good order and condition and that for failure to discharge such duty there was liability on the part of the vessel and her owners to a seaman suffering injury as a result thereof. The Osceola, 189 U. S. 158, 175. . . . In the Edith Godden (D. C.) 23 F. 42, 45, which dealt with the case of a seaman injured by a defective derrick, Judge Addison Brown pointed out that in dealing with injuries sustained by the use of modern appliances 'it is more reasonable and equitable to apply the analogies of the municipal law in regard of owners and masters, rather than to extend the limited rule of responsibility under the ancient maritime law, to these new, modern conditions, for which those limitations were never designed.' " See, in addition to the cited opinion of Judge Brown, his opinion in The City of Alexandria, 17 Fed. 390. See also Storgard v. France & Canada S.S. Corp., 263 Fed. 545, 547-548; The H. A. Scandrett, 87 F. 2d 708, 711.

[10] In all of the cases cited or found, except perhaps the stevedore cases cited in note 3, where the cause of action has been based upon unseaworthiness, there was a contract. The "implied warranty" on the part of a shipowner that a ship is seaworthy has been read not only into contracts made with seamen, Hamilton v. United States, 268 Fed. 15, 21, but also into contracts for the carriage of goods by sea, Bradley Fertilizer Co. v. The Edwin I. Morrison, 153 U. S. 199, 210-211, although this liability has been modified by the Harter Act, 27 Stat. 445, 46 U. S. C. §§ 189-195; and in rare instances perhaps also into contracts with passengers, cf. Muise v. Gorton-Pew Vessels Co., 1938 A. M. C. 714, 718; Rainey v. New York & P. S. S. Co., 216 Fed. 449, 453; Robinson, Admiralty (1939) 306, note 109.

ever, that the liability is itself contractual or that it may not extend to situations where the ship's work is done by others not in such an immediate relation of employment to the owner. That the liability may not be either so founded or so limited would seem indicated by the stress the cases uniformly place upon its relation, both in character and in scope, to the hazards of marine service which unseaworthiness places on the men who perform it. These, together with their helplessness to ward off such perils and the harshness of forcing them to shoulder alone the resulting personal disability and loss, have been thought to justify and to require putting their burden, in so far as it is measurable in money, upon the owner regardless of his fault.[11] Those risks are avoidable by the owner to the extent that they may result from negligence. And beyond this he is in position, as the worker is not, to distribute the loss in the shipping community which receives the service and should bear its cost.

These and other considerations arising from the hazards which maritime service places upon men who perform it, rather than any consensual basis of responsibility, have been the paramount influences dictating the shipowner's liability for unseaworthiness as well as its absolute character. It is essentially a species of liability without fault, analogous to other well-known instances in our law. Derived from and shaped to meet the hazards which performing the service imposes, the liability is neither limited by conceptions of negligence nor contractual in character. *Mahnich* v. *Southern S.S. Co., supra*; *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52; *Carlisle Packing Co.* v. *Sandanger, supra*. It is a

[11] Contributory negligence has never been a defense in suits brought by seamen to recover for injuries due to a ship's unseaworthiness but has been applied merely in mitigation of damages. Socony-Vacuum Oil Co. v. Smith, 305 U. S. 424, 429; The Arizona v. Anelich, 298 U. S. 110, 122, and cases cited. And in The Max Morris, 137 U. S. 1, the Court held that in a suit for personal injuries brought in admiralty by a stevedore the admiralty rule of divided damages was applicable. It was said in The Arizona v. Anelich, at 122-123, with respect to the defense of assumption of risk: "The seaman assumes the risk normally incident to his perilous calling . . . , but it has often been pointed out that the nature and the practical difficulties of his avoiding exposure to the risks of unseaworthiness and defective appliances make such a defense . . . peculiarly inapplicable to suits by seamen to recover for the negligent failure to provide a seaworthy ship and safe appliances." As to the fellow servant rule, see Mahnich v. Southern S. S. Co., 321 U. S. 96, 100-103; The Frank and Willie, 45 Fed. 494, 495-496.

In this connection is pertinent also the frequently stated rule that the obligation of a shipowner to provide a seaworthy ship is nondelegable. See, e. g., Lord and Sprague, Cases on the Law of Admiralty (1926) 237, note 4; The Rolph, 299 Fed. 52, 55; Globe S. S. Co. v. Moss, 245 Fed. 54, 55.

form of absolute duty owing to all within the range of its humanitarian policy.

On principle we agree with the Court of Appeals that this policy is not confined to seamen who perform the ship's service under immediate hire to the owner, but extends to those who render it with his consent or by his arrangement. All the considerations which gave birth to the liability and have shaped its absolute character dictate that the owner should not be free to nullify it by parcelling out his operations to intermediary employers whose sole business is to take over portions of the ship's work or by other devices which would strip the men performing its service of their historic protection. The risks themselves arise from and are incident in fact to the service, not merely to the contract pursuant to which it is done. The brunt of loss cast upon the worker and his dependents is the same, and is as inevitable, whether his pay comes directly from the shipowner or only indirectly through another with whom he arranges to have it done. The latter ordinarily has neither right nor opportunity to discover or remove the cause of the peril and it is doubtful, therefore, that he owes to his employees, with respect to these hazards, the employer's ordinary duty to furnish a safe place to work, unless perhaps in cases where the perils are obvious or his own action creates them.[12] If not, no such obligation exists unless it rests upon the owner of the ship. Moreover, his ability to distribute the loss over the industry is not lessened by the fact that the men who do the work are employed and furnished by another. Historically the work of loading and unloading is the work of the ship's service, performed until recent times by members of the crew. *Flores* v. *The Scotia*, 35 Fed. 916; *The Gilbert Knapp*, 37 Fed.

[12] In Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, the stevedoring company was held liable to its employee for negligence in failing to furnish a safe place to work. This consisted in its failure to secure properly a beam which supported hatch covers removed by it in the loading process. The libelant joined the shipowner with the stevedoring contractor, both being represented by the same proctors and advocates. The stevedoring company acquitted the shipowner and the libel was dismissed as to it. The case, in view of these circumstances, is not authority for the view that the stevedoring company is liable to the stevedore under the employer's obligation to furnish a safe working place, for the hazards secured against by the shipowner's obligation of seaworthiness. It holds only that the stevedoring company is liable for its own negligence.

It has frequently been said that a shipowner owes to stevedores the duty of providing a safe place to work, see, e. g., The Joseph B. Thomas, 86 Fed. 658, 660; The No. 34, 25 F. 2d 602, 604; but cf. Willis v. Lyke Bros. S. S. Co., 23 F. 2d 484, 489, although the duty has at times been qualified by statements that it does not extend to latent defects that "a reasonable inspection by the shipowner or his agents would not disclose." Wholey v. British & Foreign S. S. Co., 158 Fed. 379, 380, affirmed, 171 Fed. 399.

209, 210; *The Seguranca*, 58 Fed. 908, 909. That the owner seeks to have it done with the advantages of more modern divisions of labor does not minimize the worker's hazard and should not nullify his protection.

Every consideration, therefore, giving rise to the liability and shaping its character bespeaks inclusion of men intermediately employed to do this work, save only that which is relevant to consent as a basis for responsibility. We do not think this is the ultimate basis of the liability where the seaman hired by the vessel does the work. It is only the source of the relation which furnishes the occasion for the liability, attached by law to performance of the service, to come into play. Not the owner's consent to liability, but his consent to performance of the service defines its boundary. That this is given by contract with the worker's employer rather than with the worker himself does not defeat the responsibility.

Accordingly we think the Court of Appeals correctly held that the liability arises as an incident, not merely of the seaman's contract, but of performing the ship's service with the owner's consent. For this view, in addition to the stated considerations of principle, the court rightly found support in the trend and policy of this Court's decisions, especially in *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50; *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, and *Uravic* v. *Jarka Co.*, 282 U. S. 234.

The *Haverty* case is of special importance. The Court of Appeals said, with reference to its bearing and that of the *Imbrovek* decision: "And so an injury to a stevedore comes within the classification of a marine tort. 'Atlantic Transport Co. v. Imbrovek, 234 U. S. 52. It seems therefore that when a man is performing a function essential to maritime service on board a ship the fortuitous circumstances of his employment by the shipowner or a stevedoring contractor should not determine the measure of his rights. This is the very basis on which the Jones Act[18] was held applicable to give redress to an injured employee in International Stevedoring Company v. Haverty. . . ." 14 F. 2d 98, 101.

The conclusions are sound, notwithstanding the cases are distinguishable in their specific rulings. From that fact it does not follow that either those rulings or the grounds upon which they went are irrelevant or without force for our problem. It is true

[18] Merchant Marine Act of 1920, 41 Stat. 1007, 46 U. S. C. § 688, extending to "seamen" the benefits of the Federal Employers Liability Act, 45 U. S. C. § 51 *et seq.*

that negligence was the basis of recovery in both cases and that in each the stevedoring contractor was held responsible. But it was of the gist of the jurisdictional question presented by the libel in *Imbrovek*[14] that stevedores injured while working aboard the ship, though not employed by its owner, are within the traditional protections afforded to seamen by admiralty and that "the fortuitous circumstance" of their employment by one other than the owner to do the ship's work not only did not remove them from those protections, but brought their employers within the protection of the liability to supply them.[15]

The same underlying considerations were controlling in the *Haverty* decision, although the liability asserted arose under an Act of Congress and the Court cast its ruling in terms of legislative intent. The only fulcrum for its action was the statute's undefined use of the term "seamen" in conferring the right of recovery under the Federal Employer's Liability Act for the employer's negligence. 41 Stat. 988, 1007. Recognizing that for most purposes "stevedores are not 'seamen,'"[16] and relying upon *Imbrovek*, the Court again stressed that "the work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew," and that the statute's policy was to afford compensation for injuries "as properly part of the cost of

[14] It was argued that the wrong, although taking place aboard ship in navigable waters, was not of maritime character and hence not within the admiralty jurisdiction of the District Court.

[15] In answer to the contention that the service was not maritime and hence the independently employed stevedore's claim was not within the admiralty jurisdiction, the Court said: "Upon its proper performance depend in large measure the safe carrying of the cargo and the safety of the ship itself; and it is a service absolutely necessary to enable the ship to discharge its maritime duty. Formerly the work was done by the ship's crew; but, owing to the exigencies of increasing commerce and the demand for rapidity and special skill, it has become a specialized service devolving upon a class as clearly identified with maritime affairs as are the mariners'." 234 U. S. 52, 61-62.

[16] The Court of Appeals in this case likewise carefully limited its ruling in recognition of the fact that stevedores are not entitled to all the protections a seaman may claim.

It is in relation to liability for personal injury or death arising in the course of his employment aboard the ship that the policy of our law has been most favorable to the stevedore's claims. Whether or not that policy has been influenced by the vicissitudes experienced in finding protection for him as a result of the *Jensen* decision, 244 U. S. 205; Davis *v.* Department of Labor, 317 U. S. 249, 252-253, the reasons underlying the policy are perhaps more nearly identical in this application, as between seamen and longshoremen, than those supporting other rights of the seaman, such as that to maintenance and cure.

the business," that is, of the maritime service rendered, rather than by the capricious circumstance of employment "by a stevedore rather than by the ship." And the *Uravic* decision rejected an equally capricious discrimination based upon the nationality of the vessel's flag.

Running through all of these cases, therefore, to sustain the stevedore's recovery is a common core of policy, which has been controlling, although the specific issue has varied from a question of admiralty jurisdiction to one of coverage under statutory liability within the admiralty field. It is that for injuries incurred while working on board the ship in navigable waters the stevedore is entitled to the seaman's traditional and statutory protections, regardless of the fact that he is employed immediately by another than the owner.[17] For these purposes he is, in short, a seaman because he is doing a seaman's work and incurring a seaman's hazards. Moreover, to make the policy effective, his employer is brought within the liability which is peculiar to the employment relation to the extent that and because he also undertakes the service of the ship.

It would be anomalous if such a policy, effective to control such issues, were less effective when the question is simply whether the stevedore is entitled to the traditional securities afforded by the law of the sea to men who do the ship's work. Nor does it follow from the fact that the stevedore gains protections against his employer appropriate to the employment relation as such, that he loses or never acquires against the shipowner the protections, not peculiar to that relation, which the law imposes as incidental to the performance of that service. Among these is the obligation of seaworthiness. It is peculiarly and exclusively the obligation of the owner. It is one he cannot delegate.[18] By the same token it is one he cannot contract away as to any workman within the scope of its policy. As we have said, he is at liberty to conduct his business by securing the advantages of specialization in labor and skill brought about by modern divisions of labor. He is not at liberty by doing this to discard his traditional responsibilities. That the law permits him to substitute

[17] In this case we are not concerned with the question whether the same policy extends to injuries incurred ashore by a stevedore engaged in the same work, a matter which is relevant however in Swanson v. Marra Brothers, Inc., No. 405, decided this day. Cf. O'Donnell v. Great Lakes Co., 318 U. S. 36.

[18] See note 11.

others for responsibilities peculiar to the employment relation does not mean that he can thus escape the duty it imposes of more general scope. To allow this would be, in substantial effect, to convert the ancient liability for maritime tort into a purely contractual responsibility. This we are not free to do.

It remains to consider one other argument, namely, that the *Haverty* decision has been overruled, in effect, by the enactment of the Longshoremen and Harbor Workers Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. § 901 ff, and therefore the effect of that decision as furnishing any support for including longshoremen within the owner's obligation of seaworthiness has been nullified. The argument is that by giving longshoremen the rights of compensation afforded by that Act against the employer and making them exclusive Congress has withdrawn from them not only the protections gained by virtue of the Merchant Marine Act of 1920 under the *Haverty* decision, but also all other protections relating to personal injury which otherwise might be available to them under the general maritime law. In other words, it is claimed that the remedies afforded by the Longshoremen's legislation are exclusive of all other remedies for injuries incurred aboard ship, whether against the employer or others.

This view cannot be accepted. Apart from the fact that the *Uravic* decision was rendered by a unanimous Court some three years after the Longshoremen and Harbor Workers Act was adopted, with a like result in *Jamison* v. *Encarnacion*, 281 U. S. 635,[19] the compelling answer is that Congress by that Act not only did not purport to make the stevedore's remedy for compensation against his employer exclusive of remedies against others. It expressly reserved to the stevedore a right of election to proceed against third persons responsible for his injury[20] and, in case of his election to receive compensation, it provided for assignment of his rights against third persons to his employer.

[19] Both cases were determined on facts which arose prior to enactment of the statute.

[20] Section 33(a) of the Act provides: "If, on account of a disability or death for which compensation is payable under this Act the person entitled to such compensation determines that some person other than the employer is liable in damages, he may elect, by giving notice to the deputy commissioner in such manner as the commission may provide, to receive such compensation or to recover damages against such third person." 44 Stat. 1440, 33 U. S. C. § 933(a).

binding the latter to remit to him any excess of the recovery over the compensation, expenses of recovery, etc.[21]

We may take it therefore that Congress intended the remedy of compensation to be exclusive as against the employer. See *Swanson* v. *Marra Brothers, Inc.*, No. 405, decided this day; 33 U. S. C. § 905. But we cannot assume, in face of the Act's explicit provisions, that it intended this remedy to nullify or affect others against third persons. Exactly the opposite is true. The legislation therefore did not nullify any right of the longshoreman against the owner of the ship, except possibly in the instance, presumably rare, where he may be hired by the owner. The statute had no purpose or effect to alter the stevedore's rights as against any but his employer alone. Beyond that consequence, moreover, we think it had none to alter either the basic policy or the rationalization of the *Haverty* decision. Because the recovery under the Merchant Marine Act of 1920 was limited to the employer, the necessary effect of the Longshoremen and Harbor Workers Act, likewise limited, was to substitute its remedy for that provided under the preexisting legislation and the *Haverty* decision's construction of it. There was none to nullify the basic and generally applicable policy of that decision or to affect the validity of its foundations in other applications.

It may be added that, beyond the applicability of these considerations to sustain the stevedore's right of recovery for breach of the owner's obligation of seaworthiness, are others to subserve the statutory policy of giving his employer recovery over against the owner when the latter's breach of duty casts upon the employer the burden of paying compensation. These may furnish additional reason for our conclusion. With them however, we are not immediately concerned.

The judgment is

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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[21] See 33 U. S. C. §§ 933(b) to (g) inclusive. As to the right of election and the right to receive compensation or the amount of the recovery against third persons, whichever is greater, see Chapman *v.* Hooge, 296 U. S. 526, 529; Marlin *v.* Cardillo, 95 F. 2d 112; Grasso *v.* Lorentzen, 149 F. 2d 127; The Pacific Line, 31 F. 2d 152; Cupo *v.* Isthmian S. S. Co., 56 F. Supp. 45. The statute did not cover members of a crew of a vessel, thereby saving to them their preexisting rights under the Merchant Marine Act of 1920. 33 U. S. C. § 902(3). See South Chicago Coal & Dock Co. *v.* Bassett, 309 U. S. 251, 256-257.

SUPREME COURT OF THE UNITED STATES.

No. 365.—October Term, 1945.

Seas Shipping Company, Inc., Petitioner, vs. Joseph Sieracki.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 22, 1946.]

Mr. Chief Justice Stone, dissenting.

Mr. Justice Frankfurter, Mr. Justice Burton and I think the judgment should be reversed.

Respondent, the employee of a stevedoring company, which had contracted with petitioner to load its vessel lying in navigable waters, was injured while so employed, in consequence of the failure of a shackle, a part of the ship's tackle, due to its hidden defects. The courts below have found that two other defendants were liable for negligence in furnishing the defective shackle. The courts were unable to find that the injury was attributable to any negligent act or omission of the vessel or its owner. But the Court of Appeals below and this Court have sustained a recovery against petitioner on the novel ground that the owner is an insurer against injury caused by the unseaworthiness of the vessel or its appliances to a maritime worker on board, although not a member of the crew or the ship's company, and not employed by the vessel.

The Court has thus created a new right in maritime workers not members of the crew of a vessel, which has not hitherto been recognized by the maritime law or by any statute. For this I can find no warrant in history or precedent, nor any support in policy or in practical needs. The liability of a vessel or its owner to members of the crew, as an insurer of seaworthiness of the vessel and its tackle, was not recognized by the maritime law of England until established by statute. Merchant Shipping Act, 39 & 40 Vict. c. 80, § 5; 57 & 58 Vict. c. 60, § 458. In this country the right of the seaman to demand, in addition to maintenance and cure, indemnity for injuries resulting from unseaworthiness, was first recognized by this Court in *The Osceola*, 189 U. S. 158. In later cases it has been established that due diligence of the owner does not relieve him from this obligation. See *The Arizona* v. *Anelich*, 298 U. S. 110, 121; *Socony-Vacuum*

Co. v. *Smith*, 305 U. S. 424, 429, 432; *Mahnich* v. *Southern S.S. Co.*, 321 U. S. 96, 100, and cases cited; *The Neptuno*, 30 Fed. 925; *The Frank & Willie*, 45 Fed. 494; *The Julia Fowler*, 49 Fed. 277; cf. *The Edwin Morrison*, 153 U. S. 199, 210.

The liability of the vessel or owner for maintenance and cure, regardless of their negligence, was established long before our modern conception of contract. But it, like the liability to indemnify the seaman for injuries resulting from unseaworthiness, has been universally recognized as an obligation growing out of the status of the seaman and his peculiar relationship to the vessel, and as a feature of the maritime law compensating or offsetting the special hazards and disadvantages to which they who go down to sea in ships are subjected. They are exposed to the perils of the sea and all the risks of unseaworthiness, with little opportunity to avoid those dangers or to discover and protect themselves from them or to prove who is responsible for the unseaworthiness causing the injury.

For these reasons the seaman has been given a special status in the maritime law as the ward of the admiralty, entitled to special protection of the law not extended to land employees. *Robertson* v. *Baldwin*, 165 U. S. 275, 282-3; *The Arizona* v. *Anelich*, *supra*, 122, 123; *Calmar S.S. Corp.* v. *Taylor*, 303 U. S. 525; *Socony-Vacuum Co.* v. *Smith*, *supra*, 430; *Aguilar* v. *Standard Oil Co.*, 318 U. S. 724. See also Judge Addison Brown in *The City of Alexandria*, 17 Fed. 390, 394, *et seq.* Justice Story said in *Reed* v. *Canfield*, 1 Sumn. 195, 199: "Seamen are in some sort co-adventurers upon the voyage; and lose their wages upon casualties, which do not affect artisans at home. They share the fate of the ship in cases of shipwreck and capture. They are liable to different rules of discipline and sufferings from landsmen. The policy of the maritime law, for great, and wise, and benevolent purposes, has built up peculiar rights, privileges, duties, and liabilities, in the sea-service, which do not belong to home pursuits."

It is for these reasons that throughout the long history of the maritime law the right to maintenance and cure, and later the right to indemnity for injuries attributable to unseaworthiness, have been confined to seamen. Longshoremen and harbor workers are in a class very different from seamen, and one not calling for the creation of extraordinary obligations of the vessel or its owner in their favor, more than other classes of essentially land workers

Unlike members of the crew of a vessel they do not go to sea; they are not subject to the rigid discipline of the sea; they are not prevented by law or ship's discipline from leaving the vessel on which they may be employed; they have the same recourse as land workers to avoid the hazards to which they are exposed, to ascertain the cause of their injury and to prove it in court.

Congress has recognized this difference in their status from that of seamen. Although it has given extensive consideration to it in enacting the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 901 ff., in 1927, and again, upon its revision in 1934 and 1938, in no instance did Congress extend to longshoremen and harbor workers any of the special rights or privileges conferred on seamen by the maritime law. In fact Congress, by the Longshoremen's Act, cut off from longshoremen and harbor workers, the right extended to them by judicial construction of the Jones Act, 46 U. S. C. § 688, *International Stevedore Co.* v. *Haverty*, 272 U. S. 50; *Cravic* v. *Jarka Co.*, 282 U. S. 234, to enjoy the same right of recovery from the vessel or owner as seamen for negligent injuries sustained while working on navigable waters. *Swanson* v. *Marra Brothers, Inc.*, No. 405, decided this day. While the Act gave to longshoremen and stevedores a right to compensation against their employer, it neither conferred upon nor withheld from them any rights of recovery for such injuries against third persons. It can hardly be said that the failure of Congress thus to enlarge the rights of longshoremen, so as to make them comparable to those of seamen, is a recognition of existing rights against third persons arising from the warranty of seaworthiness which no court has ever recognized* and which grows out of a status which longshoremen have never occupied.

There are no considerations of policy or practical need which should lead us, by judicial fiat, to do that which Congress, after a full study of the subject, has failed to do. Wherever the injury occurs on navigable waters, Congress has given to longshoremen and harbor workers substantial rights to compensation against

*The two cases relied upon by the Circuit Court of Appeals do not lend support to its decision. In Cassil v. United States Emergency Fleet Corp., 289 Fed. 774, recovery was sought on the ground that the vessel was negligent, and the Court merely said that there could be no claim against the vessel unless it was unseaworthy. The court seems to have assumed that a recovery for unseaworthiness could be had only if negligence was shown. See cases cited in Mahnich v. Southern S. S. Co., 321 U. S. 96, 100. In W. J. McCahan v. Stoffel, 41 F. 2d 651, a longshoreman was allowed recovery on the ground of negligence of one of the ship's employees.

their employer for injuries inflicted without his fault. *South Chicago Co.* v. *Bassett*, 309 U. S. 251. It has left them free to pursue their remedy for injuries resulting from negligence of third parties, including in this case the vessel and the furnishers of the defective shackle. Where the injury occurs on land they are free to pursue the remedy afforded by local law. *State Industrial Commission* v. *Nordenholt Corp.*, 259 U. S. 263; *Smith & Son* v. *Taylor*, 276 U. S. 179; *Swanson* v. *Marra Brothers, Inc.*, No. 405, decided this day. There would seem to be no occasion for us to be more generous than Congress has been by presenting to them paid up accident insurance policies at the expense of a vessel by which they have not been employed, and which has not failed in any duty of due care toward them. Apparently under the decision now rendered the maritime worker employed by a vessel on navigable waters, but not a member of the crew, would enjoy rights of recovery not accorded to members of the crew. For he would be entitled to indemnity upon the warranty of unseaworthiness as are members of the crew and also to the benefits of the Longshoremen's & Harbor Workers' Act from which members of the crew are excluded. See *South Chicago Co.* v. *Bassett*, *supra*, 255 6.

Nor is the rule now announced to be justified as a modern and preferred mode of distributing losses inflicted without fault. Congress, in adopting the Longshoremen's Act, has chosen the mode of distribution in the case of longshoremen and harbor workers. By 33 U. S. C. § 901 *et seq.* it has given to them compensation for their injuries, irrespective of fault. Section 933 provides that if a stevedore entitled to compensation elects to recover damages against a third person, the employer must pay as compensation a sum equal to the excess of the amount which the commission determines is payable on account of the injury over the amount recovered against the third person. The whole philosophy of liability without fault is that losses which are incidental to socially desirable conduct should be placed on those best able to bear them. Congress has made a determination that the employer is best able to bear the loss which, in this instance, could not be avoided by the exercise of due care. This is an implied determination which should preclude us from saying that the ship owner is in a more favorable position to absorb the loss or to pass it on to society at large, than the employer.